

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

September 20, 21, 2015

AGENDA

CALL TO ORDER

Business Meeting, Monday, September 21, 2015, 8:30 a.m., 630 Camp Street, New Orleans, 5th Floor.

Personal Appearances, Monday, September 22, 2015, 1:00 p.m.

Formal Administrative Hearing, Monday, September 21, 2015, 2:30 p.m.¹

Formal Administrative Hearing, Tuesday, September 22, 2015, 8:00 a.m.²

PUBLIC SESSION

1. MINUTES/PRIOR MEETINGS/CONFERENCES

Approval of minutes of last meeting.

Status report on action items of prior Board meetings.

Report on assignments to counsel.

2. RULINGS AND ADVISORY OPINIONS

Prohibition against foreign professional corporations and foreign limited liability companies.

3. COMMUNICATIONS AND INFORMATION

Stefan Lorincz, DPM; Scope of Practice; H&Ps

The American Society for Aesthetic Plastic Surgery, Inc.

American College of Emergency Physicians.

Medscape Articles on Physician Health Programs.

Article Regarding Psychiatric Physicians Shortage.

4. GENERAL ADMINISTRATIVE MATTERS¹

Financial Report.

President's Report.

Executive Director's Report.

Advisory Committee on Polysomnography Resignation.

5. RULES AND REGULATIONS

a. **Final Rules/Amendments:** None since the last meeting of the Board.

b. **Rules/Amendments: Noticed for Intent: Physicians and Surgeons – Unprofessional Conduct:** During its April 2013 meeting, the Board expressed a desire to consider the development of rules correlating a physician representing himself or herself as a specialist in a particular field of practice without appropriate formal training in that field. The draft also included a prohibition against a physician prescribing of controlled substances to one's self or immediate family members in the absence of an emergency. A draft was submitted for the Board's review at its August and September 2013 meetings. At its October 2013 meeting, the Board determined to defer that part of the proposed rule dealing with self-prescribing and to provide *Notice of Intent* to adopt the amendments on unprofessional conduct in the *Louisiana Register*. Prior to publication, additional information was sought. Staff presented additional information concerning self/immediate family-prescribing of controlled substances at its June 2014 meeting. Following review and discussion, the Board elected to provide *Notice of Intent* to adopt the rules in the *Louisiana Register*. Said *Notice of Intent* appeared in the October 2014 edition of the *Louisiana Register*. At its December 2014 meeting, the Board considered the written comments in response to the *Notice of Intent*. Following review and discussion, the Board rejected some comments and decided to accept and address others by technical and substantive

¹ Conducted in Executive Session

² Conducted in Executive Session

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS
September 20, 21, 2015
AGENDA

amendments. At its February 2015 meeting, the Board discussed the current status of the rule project. The Potpourri hearing scheduled for March 26, 2015 was postponed to discuss additional changes. At its March and April 2015 meetings, the Board discussed potential ways to further address concerns over the proposed amendment to Section 7603A.9., regarding a physician representing himself or herself as a specialist. Following discussion, the Board elected to defer this aspect of the amendments and to rely on the prohibition contained in the Medical Practice Act on false advertising as a basis to deal with future complaints along these lines. It also decided to proceed only with that part of the amendments addressing self-prescribing. A Potpourri Notice was sent to the *Register* and a hearing was scheduled for August 20, 2015 for 10:30 a.m. to receive comments on the substantive changes. The Potpourri hearing was held and a Final Legislative Report has been sent to the Legislative oversight committees and commenters. Barring an oversight hearing, it is anticipated that the amendments will be formally adopted by and upon promulgation in the October 2015 edition of the *Louisiana Register*. **Occupational Therapy:** The Occupational Therapy Advisory Committee proposed a number of amendments to the Board's rules respecting occupational therapists. Following review by Board staff, and a number of revisions to conform the rules to the law, a revised draft was returned to the Committee Chair for review. Minor substantive suggestions for revision or modification have been received and incorporated into the draft. In sum, the proposed amendments update the rules generally, insert additional language provided in the law, update definitions and practice standards, rearrange various provisions and delete others that are no longer needed. At the July 2014 meeting, a draft was presented for initial review and consideration. At its August 2014 meeting, the Board considered additional revisions suggested by staff, and, thereafter, elected to provide *Notice of Intent* to adopt the amendments. Said *Notice of Intent* appeared in the October 2014 edition of the *Louisiana Register*. At its December 2014 meeting, the Board considered the written comments in response to the *Notice of Intent* and elected to refer them to its OT Advisory Committee for input. In furtherance of this issue, the Committee/Staff reached out to the commenters and the Louisiana Association of Occupational Therapists ("LOTA"). Their input and the Committee's suggested revisions have been received; however, given the resulting delay there is insufficient time to make substantive changes, hold a hearing and conclude the rule making effort within the 1 year limit provided by law. Following due consideration at its July 2015 meeting, the Board voted to proceed with formal adoption of the rules without amendment by publication in or before the October 15, 2015 *Louisiana Register* and committed to commence a new rule making effort to amend two (2) of the sections of the rules (§1939 and §4919) made the basis of the comments. The Final Legislative Report was sent to the Legislative oversight committees and commenters. Barring an oversight hearing, it is anticipated that the amendments will be formally adopted by and upon promulgation in the October 2015 edition of the *Louisiana Register*. **Physicians and Surgeons – Telemedicine:** Act 442 of the 2014 Legislative Session, which amended R.S. 37:1271 of the Medical Practice Act necessitated various changes to the Board's existing Telemedicine Rules. Preliminary suggestions were presented to the Board during its July 2014 meeting for consideration and discussion. A revised draft was presented for consideration and discussion at its August 2014 meeting, at which time the Board voted to provide *Notice of Intent* to adopt the amendments. A draft containing technical and one substantive change was presented for review and discussion. Said *Notice of Intent* appeared in the October 2014 edition of the *Louisiana Register*. At its December 2014 meeting, the Board considered the written comments in response to the *Notice of Intent*. Following review and discussion, the Board rejected

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS
September 20, 21, 2015
AGENDA

some comments and decided to accept and address others by technical and substantive amendments. The Potpourri hearing schedule for March 26, 2015 was postponed to discuss additional changes. At the request of the Chair of the House Health & Welfare Committee (Rep. Simon), the Executive Director and counsel attended a meeting at the capitol with Rep. Simon, lobbyists for the LSMS and LHA, and representatives of various other stakeholder organizations to discuss the Board's proposed amendments that limit the ability of physicians to prescribe controlled substances by telemedicine. It was clear by the discussion that the concerns focused on the limitations in the Board's proposed amendments on the ability of physicians to prescribe controlled substances by telemedicine. In an effort to accommodate these concerns, the Executive Director suggested additional changes for consideration. Despite this effort, HCR 4 (Rep. Simon) was passed by the House H&W Committee. At its May 2015 meeting, the Board considered the status of the rulemaking effort, reviewed HCR 4, which has since been adopted by the Legislature and elected to provide notice of the additional substantive changes previously suggested in the Register. A *Potpourri Notice* was sent to the *Louisiana Register* and a hearing was scheduled for August 20, 2015 for 9:30 a.m. to receive comments on the substantive changes. A Potpourri Notice was sent to the *Register* and a hearing was scheduled for August 20, 2015 for 10:30 a.m. to receive comments on the substantive changes. The Potpourri hearing was held and a Final Legislative Report has been sent to the Legislative oversight committees and commenters. Barring an oversight hearing, it is anticipated that the amendments will be formally adopted by and upon promulgation in the October 2015 edition of the *Louisiana Register*.

c. Rules/**Amendments under Development:** The following rules are under consideration by the Board. **Midwifery:** The Board considered amendments to the existing rules governing licensed midwife practitioners incorporating changes pursuant to the Louisiana Midwifery Practice Act during the 2012 session of the Legislature, updating the rules generally and rearranging sections for ease of reference. The Board reviewed and discussed changes at its January and February 2015 meetings. At its April 2015 meeting, the Board considered a suggestion that a licensed midwife be permitted to continue providing prenatal care to a woman with one prior cesarean section provided arrangements have been made with a physician, documented in the midwife's chart for the planned hospital delivery at the onset of labor. Per the Board's request, the suggested language is attached for the Board's consideration. The Louisiana Midwives Association has provided input on the suggested changes. Input from another stakeholder has been received and it is being reviewed by staff. It is anticipated that a final report will be presented to the Board at the October 2015 meeting. **Physicians Compounding Medication:** At its December 2014 and January 2015 meetings, the Board reviewed Emergency Rules adopted by the Louisiana State Board of Pharmacy to reflect certain changes in federal law concerning compounded medication. Following review and discussion, the Board elected to undertake a rulemaking effort as to physicians who compound medication in order to insure consistency with federal and state law and regulations. A draft will be presented for initial review and consideration in due course. **Clinical Laboratory Personnel:** At the request of its Clinical Laboratory Personnel ("CLP") Advisory Committee, the Board agreed to undertake a rulemaking effort to amend its CLP Rules to reduce the term of a temporary permit from six months to three months. It directed that a draft be prepared and presented for review and approval. In conformity with the Board's direction, a draft was presented for initial review and discussion at its April 2015 meeting. Following further discussion at its May 2015 meeting, the Board voted to provide *Notice of Intent* to adopt the rule amendments. **Physician Advertising:**

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

September 20, 21, 2015

AGENDA

Board Certification: At its March 2015 meeting, the Board determined to undertake a rulemaking effort to establish a process for its approval of certifying boards, alternative to the ABMS and AOA, for purposes of physician advertising of *Board Certification*. The Board directed that a draft be prepared and presented for review and approval. In conformity with the Board's direction, a draft was presented for initial review and discussion at its April 2015 meeting. Following further discussion at its May 2015 meeting, the Board voted to provide *Notice of Intent* to adopt the amendments. A minor working change will be discussed at the meeting. If acceptable, it is anticipated that said *Notice* will appear in the November 2015 edition of *Louisiana Register*.

Complaints and Investigations: The President directed that staff/counsel commence a rule-making effort detailing the processes used by the Board for handling complaints and investigations given the concerns raised by HB 576, subsequently HB 843 (Act 442, Rep. Hazel). The matter appeared on the Board's May 2015 agenda for consideration and discussion of the rulemaking effort. The new law requires the Board to promulgate rules by January 1, 2016. During the July 2015 meeting, the Board reviewed copies of Act 441, the Board's existing Rules on Adjudication (§§9901-9931) and a draft of the proposed rules. At the August 2015 meeting, the Board reviewed the draft of the rules which had been presented at the July 2015 meeting. Following a lengthy review of the draft, upon the motion of Dr. Farris, duly seconded by Dr. Clark and passed by unanimous voice vote of the members present, the Board approved the draft as amended for publication as a *Notice of Intent* in the next edition of the *Louisiana Register*.

Athletic Trainers: The Board's Athletic Trainer Advisory Committee is working on amendments to the athletic trainer rules to conform them to the 2014 amendments to the Athletic Trainer Practice Act. The Committee's draft has been received. It is anticipated that a draft will be presented to the Board for consideration at the October 2015 meeting.

Podiatry: The Podiatry Advisory Committee ("PAC") has requested amendments to the Board's Podiatry Rules to: i) remove the requirements for board certification or eligibility as to an applicant for advanced practice who has completed a three year podiatry medical surgical residency training (PM&S 36) program; ii) make the Board's rules on unprofessional conduct equally applicable to podiatrists; and iii) include podiatrists in the Board's current effort on Board certification for advertising purposes. As to item i., the draft presented during its May 2015 meeting has been revised per the input of the PAC and item ii will require a separate effort that will be presented in due course; and, item iii requires further research.

Marijuana for Medical Purposes: Act 261 (SB 143 Sen. Mills) of the 2015 session of the Louisiana Legislature directed the Board to: i) promulgate rules by January 1, 2016 authorizing physicians to prescribe marijuana for specified conditions (glaucoma, symptoms resulting from administration of chemotherapy cancer treatment and spastic quadriplegia); and ii) annually submit a report to the Senate and House Health & Welfare Committees as to any additional conditions that should be added to the list. The Act was provided to the Board for review and discussion at the July 2015 meeting. A draft of the proposed rules were presented for initial review and consideration at the August 2015 meeting. On the motion of Dr. Burdine, duly seconded by Dr. Clark, and unanimously passed by the members present, the Board approved publication of a *Notice of Intent* to adopt the rules in the September edition of the *Louisiana Register*.

Physician Assistants: Act 453 (SB 115, Sen. Mills) modified the law governing physician assistants (Pas) in a number of ways. A rulemaking effort will be needed to conform the Board's rules to the changes. In the interim, the law as amended by Act 453 controls any disparity with the rules. In the interim, notification is being posted on the Board's web page as to how a PA may apply for Schedule II controlled substances that have been delegated by a SP. The Board has solicited the input of its PA Advisory

LOUISIANA STATE BOARD OF MEDICAL EXAMINERS

September 20, 21, 2015

AGENDA

Committee and the Louisiana Academy of Physician Assistants respecting the amendments made necessary by virtue of Act 453

EXECUTIVE SESSION

1. **MALPRACTICE COMMITTEE REPORT**
Professional liability reports.
2. **REPORTS INVESTIGATIONS/ADJUDICATIONS/LITIGATION**
Investigation reports.
Personal appearance schedule.
3. **LITIGATION**
Reports on pending appeals/suits/petitions.
4. **ADJUDICATION REPORT**
5. **GENERAL DISCIPLINARY MATTERS**
Review of requests for reinstatement to full, unrestricted status, off probation.
Review of request for reinstatement of surrendered/revoked license.
6. **LICENSURE AND CERTIFICATION**
Clinical Laboratory Personnel, non-routine applicant.
Podiatry, Advance Practice; Conservative Treatment of the Ankle.
Graduates of International Medical Schools
Non-routine applicants.
Request of acceptance of LMCC Examination.
Graduates of US/Canadian Medical Schools
Non-routine applicants.
Miscellaneous Licensure Matters
Occupational Therapy; request for waiver of examination attempt.
Clarification of licensure requirements for physicians serving as medical directors.
Board Orientation Evaluations.
7. **NEXT MEETING**
Next meeting of the Board – October 26, 27, 2015.
2016 Proposed Meeting Dates.